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11 **UNITED STATES DISTRICT COURT**
12 **WESTERN DISTRICT OF WASHINGTON**
13 **AT SEATTLE**

14 YUE C. XIE, individually and as Personal
15 Representative of the Estate of S.L.,
16 deceased,

17 Plaintiff,

18 v.

19 UNITED STATES OF AMERICA,

20 Defendant.

21 NO.

22 **COMPLAINT FOR MEDICAL**
23 **NEGLIGENCE AND**
24 **WRONGFUL DEATH**

25 **I. JURISDICTION AND VENUE**

26 1.1 Plaintiff Yue C. Xie was, at all times pertinent hereto, a resident of King County
in the State of Washington.

1.2 Plaintiff Yue C. Xie is the natural parent of S.L., deceased, and is the duly
appointed Personal Representative of the Estate of S.L.. Plaintiff brings this action against the
United States pursuant to the Federal Tort Claims Act, 28 U.S.C § 1346(b).

1.3 During all times relevant hereto, plaintiff Yue C. Xie was a patient of
International Community Health Services ("ICHS") in Seattle, Washington. Daniel Copp, M.D.
and Uyenvy Pham, M.D., as agents and employees of ICHS provided obstetrical, medical, and
other related care to Ms. Xie for her pregnancy with S.L.

1 2.5 Ms. Xie presented to ICHS on Thursday, August 2, 2012 complaining of
2 copious yellow vaginal discharge. Dr. Pham diagnosed Ms. Xie with bacterial vaginitis, and
3 noted the scheduled induction of labor on August 6.

4 2.6 Ms. Xie presented again to ICHS on Friday, August 3, 2012 complaining of
5 more copious green and yellow discharge. Gynecologic exam revealed copious yellow-green
6 fluid in her vagina. Wet mount of the discharge was negative for clue cells and substantially
7 worse for bacterial cells and white blood cells than on August 2. Dr. Copp prescribed
8 metronidazole vaginal gel for treatment of bacterial vaginitis.

9 2.7 Ms. Xie presented a third time to ICHS on Saturday, August 4, 2012
10 expressing her desire to be induced before her scheduled induction. Dr. Pham examined the
11 plaintiff and recorded severe bacterial vaginitis and thick yellow discharge. A fetal non-
12 stress test was performed that Dr. Pham described as reflecting "moderate variability, +1 accel
13 (barely) [and] no decels;" "no entirely reactive strip but not really concerning." Dr. Pham
14 declined early induction and instructed Ms. Xie to present for the planned induction on
15 August 6.

16 2.8 Contrary to Dr. Pham's interpretation, the non-stress test performed on August
17 4, 2012 was nonreactive and non-reassuring.

18 2.9 Plaintiff Yue C. Xie presented to Group Health Central Hospital for a
19 scheduled post-date labor induction on the morning of August 6, 2012.

20 2.10 The initial evaluation of Ms. Xie revealed low to no fetal heart tones and a
21 code blue was called.

22 2.11 An emergency caesarean section surgery was performed.

1 2.12 Upon incising and entering plaintiff's uterus during caesarean surgery, scant
2 amniotic fluid, thick meconium, and diffuse meconium staining were appreciated.

3 2.13 Baby S.L. had Apgar scores of zero upon delivery and did not have heart
4 tones at any time after delivery.

5 2.14 Approximately 17 minutes after her delivery, after unsuccessful resuscitation
6 attempts, plaintiff's newborn daughter, S.L., was pronounced dead.

7 2.15 S.L. died as the result of bronchopneumonia secondary to profound
8 intrauterine infection and fetal distress. No other signs of trauma or abnormal features were
9 noted on autopsy.
10

11 **III. LIABILITY AND CAUSATION**

12 Plaintiff re-alleges paragraphs 1.1 through 2.15 as though fully set forth herein.

13 3.1 At all material times in this case, Dr. Copp and Dr. Pham were acting as the
14 actual, implied, or ostensible agents of ICHS.
15

16 3.2 ICHS is liable for all acts and/or omissions of its employees, agents or
17 assigns.

18 3.3 ICHS, its employees, agents and assigns fell below the applicable standard of
19 care during the medical, obstetrical, prenatal and other care provided to Yue C. Xie and S.L.,
20 including, but not limited to, one or more of the following ways:

21 a. misdiagnosing Ms. Xie's condition on August 2, 3, and 4 as bacterial
22 vaginitis, despite the presence of multiple signs and symptoms inconsistent with that
23 diagnosis;
24
25
26

1 b. failing to consider and diagnose the presence of meconium in Ms.
2 Xie's vaginal discharge on August 2, 3, and 4, which would have indicated fetal
3 distress and prompted earlier induction of labor or delivery;

4 c. failing to perform a post-dates evaluation of Ms. Xie on August 2, 3,
5 or 4, including an ultrasound for amniotic fluid level and placental grade;

6 d. failure to diagnose an intrauterine infection on August 2, 3, and 4; and

7 e. failure to properly diagnose and respond to the nonreactive, non-
8 reassuring fetal non-stress test on August 4 by attempting earlier induction or
9 delivery.
10

11 3.4 As an institution providing health care services, ICHS owed plaintiff a duty to
12 ensure adequate training of its employees and staff and to adopt and implement appropriate
13 policies and procedures with respect to obstetrical and prenatal care. ICHS failed to ensure
14 adequate training and adoption and implementation of appropriate policies and procedures to
15 prevent injury and death of S.L. including, but not limited to, one or more of the following
16 ways: post-dates evaluation for older pregnant women in the 41st gestational week or beyond;
17 differential diagnosis and treatment of bacterial vaginitis, chorioamnionitis, and intrauterine
18 infection; and interpretation of fetal heart monitoring strips. In these failures ICHS was
19 negligent and fell below the applicable standard of care for this case.
20

21 3.5 ICHS, its employees, agents and assigns, owed plaintiff a duty to act as
22 reasonably prudent healthcare providers in their care and treatment of plaintiff Yue C. Xie
23 and S.L. ICHS, its employees, agents and assigns, in falling below the applicable standard of
24 care in this case, were negligent in the medical, obstetrical, prenatal and other health care
25 provided to plaintiff Yue C. Xie and S.L. The negligence of the ICHS, its employees, agents
26

1 and assigns was the proximate cause of the stillbirth of S.L. and plaintiff's damages as
2 outlined below.

3
4 **IV. DAMAGES**

5 Plaintiff re-alleges paragraphs 1.1 through 3.5 as though fully set forth herein.

6 4.1 Plaintiff decedent suffered the following damages which survive her death,
7 including but not limited to: disease, disability, pain and suffering, lost earning capacity, and
8 loss of the possibility of survival.

9 4.2 Plaintiff has suffered damages including, but not limited to, medical expenses,
10 grief, and loss of the love, care, affection companionship, services, and consortium of the
11 decedent.

12 4.3 The aforementioned damages are in an amount set forth in the administrative
13 claim and are to be proven at trial.

14
15 **V. PRAYER FOR RELIEF**

16 WHEREFORE, plaintiff prays for damages as set forth in paragraphs 4.1 through 4.3
17 above, for interest from the date of injury, for costs and disbursements in this litigation, for
18 attorney's fees incurred in bringing this action, and for such other relief as the Court deems just
19 and reasonable.

20 DATED this 25th day of February, 2014.

21
22 SCHROETER, GOLDMARK & BENDER

23 *s/ Adam J. Berger*

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25 ADAM J. BERGER, WSBA #20714
26 SIMS G. WEYMULLER, WSBA #33026
Counsel for Plaintiff